

SPECIAL COUNCIL MEETING

SEPTEMBER 17, 2014

The Special Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Jay Furfaro, at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, September 17, 2014 at 8:33 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum
Honorable Mason K. Chock, Sr.
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable JoAnn A. Yukimura
Honorable Jay Furfaro

Excused: Honorable Mel Rapozo

APPROVAL OF AGENDA.

Mr. Bynum moved for approval of the agenda as circulated, seconded by Ms. Yukimura, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*).

PUBLIC COMMENT.

Pursuant to Council Rule 13(e), members of the public shall be allowed a total of eighteen (18) minutes on a first come, first served basis to speak on any agenda item. Each speaker shall be limited to three (3) minutes at the discretion of the Chair to discuss the agenda item and shall not be allowed additional time to speak during the meeting. This rule is designed to accommodate those who cannot be present throughout the meeting to speak when the agenda items are heard. After the conclusion of the eighteen (18) minutes, other members of the public shall be allowed to speak pursuant to Council Rule 12(e).

There being no one to provide public comment, the meeting proceeded as follows:

COMMUNICATION:

C 2014-248 Communication (09/11/2014) from the County Attorney, requesting authorization to expend additional funds up to \$12,750 to cover "costs" for Special Counsel's continued services, including appellate services, provided in Syngenta Seeds, Inc., a Delaware corporation, et al. vs. County of Kaua'i, Civil No. CV14-00014 BMK (U.S. District Court, District of Hawai'i), and related matters; provided that Special Counsel has agreed that throughout the appeal process Special Counsel will only bill the County for costs and not charge for legal fees beyond the \$210,000 previously authorized by the Council.

RICKY WATANABE, County Clerk: Chair, for the record we have one (1) written testimony from Stephanie Iona.

Chair Furfaro: I would like to see if I can call the County Attorney up so we can read all the Executive Sessions posted on this agenda for today. Good morning.

There being no objections, the rules were suspended.

MONA W. CLARK, Deputy County Attorney: Good morning. Mona Clark, Deputy County Attorney.

EXECUTIVE SESSION: Pursuant to Hawai'i Revised Statutes (HRS) §92-7(a), the Council may, when deemed necessary, hold an Executive Session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such Executive Session shall be held pursuant to HRS §92-4 and shall be limited to those items described in HRS §92-5(a). (Confidential reports on file in the County Attorney's Office and/or the County Clerk's Office. Discussions held in Executive Session are closed to the public.)

ES-755 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session to allow Special Counsel to provide the Council with a briefing in Syngenta Seeds, Inc., et al., vs. County of Kaua'i, Civ. No. 14-00014 BMK (U.S. District Court, District of Hawai'i) and decision on further action including but not limited to filing an appeal, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item, and decision making.

ES-756 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session to allow Special Counsel to provide the Council with a briefing in Syngenta Seeds, Inc., et al., vs. County of Kaua'i, Civil No. 14-00014 BMK (U.S. District Court, District of Hawai'i) for the Council to decide whether to appeal, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item, and decision making.

ES-757 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Section 3.07(e) of the Kaua'i County Charter, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing in Syngenta Seeds, Inc., et al. vs. County of Kaua'i, Civil No. CV14-00014 BMK (U.S. District Court, District of Hawai'i), and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-758 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session for discussion and decision making relevant to Section 20.02(B) of the Kaua'i County Charter, to wit, investigating breach of confidentiality relating to executive session meetings, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: We have these four (4) items, it has been my practice since I have been Chair to actually take a roll call vote on going into Executive Session. May I have a motion as such? I do want to let the Council know my intent for ES-758 which is a visit for the Council as it relates to our own rules and breach and responsibilities in Executive Session, I would like to defer that item. I would like to have all seven (7) members here when we hear from the County Attorney. If I can clarify that I am only looking for an approval to convene in Executive Session for ES-755, ES-756, and ES-757.

Ms. Yukimura moved to convene in Executive Session for ES-755, ES-756, and ES-757, seconded by Mr. Chock.

Chair Furfaro: Yes?

Mr. Kagawa: Can we repeat the motion?

Chair Furfaro: The last item under Executive Session today, Mr. Kagawa, is a briefing about our duties and responsibilities in Executive Session.

Mr. Kagawa: Okay.

Chair Furfaro: Since we will not have all seven (7) members present, I have asked if we can defer that so we can have a separate presentation when all members are present.

Mr. Kagawa: Okay.

Chair Furfaro: Roll call vote.

The motion to convene in Executive Session for ES-755, ES-756, and ES-757 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Bynum, Chock, Hooser, Kagawa, Yukimura, Rapozo	TOTAL – 6,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Rapozo	TOTAL – 1,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Chair Furfaro: I need a motion to defer ES-758.

Upon motion duly made by Ms. Yukimura, seconded by Mr. Bynum, and carried by a vote of 6:0:1 (*Mr. Rapozo was excused*) ES-758 was deferred.

There being no objections, the Council recessed at 8:43 a.m., to convene in Executive Session.

The Special Council Meeting was called back to order at 10:36 a.m., and proceeded as follows:

Chair Furfaro: We are back from Executive Session. We had read before we went into Executive Session, communication C 2014-248, for the

posted Special Council Meeting. We had taken the public testimony prior to going into the Executive Session. I am looking for a motion and a second to take action on that item.

Mr. Bynum moved to approve C 2014-248, seconded by Ms. Yukimura.

Chair Furfaro: Members, any discussion? Mr. Hooser did you want to initiate the Special Counsel discussion?

Mr. Hooser: Thank you, Chair for reminding me. There is a lot on my mind this morning as we all do, it has been a beautiful week here, but I would like to ask our outside Counsel, Mr. Minkin, to come forward.

Chair Furfaro: May I ask the County Attorney to join him.

Mr. Hooser: Yes.

There being no objections, the rules were suspended.

Mr. Hooser: The item that we are on, Chair, just to refresh...

Chair Furfaro: Is the communication read earlier by the County Clerk, Mr. Watanabe, C 2014-248 which is a communication that authorizes money for Special Counsel.

Mr. Hooser: This is a twelve thousand seven hundred and fifty dollars (\$12,750) for Special Council. May I?

Chair Furfaro: Yes, go right ahead.

Mr. Hooser: Good morning to both of you. Before we further discuss this as a body, I wanted to ask Mr. Minkin's specifically why your firm is offering to do this appeal for twelve thousand seven hundred and fifty dollars (\$12,750) in addition to what has already been appropriated. I have two (2) questions, one is why you are doing this? If you believe and I assume the answer is yes, but if you can tell us why and if you feel this is a winnable appeal?

DAVID J. MINKIN, Special Counsel: Basically, there are a couple of reasons that come to the forefront. The primary reason being that we believe that the issue of whether State law preempted this matter should have been sent to the State Supreme Court via certified question, that is a special legal mechanism that exists. Judge Kurren did not do that. He held that there was no Federal preemption, but found that there was State preemption. We believe that the State preemption issue should have gone as we asked the Court to do, to send it to the State Supreme Court and we feel good about that particular aspect of the appeal, as well as the issues that are out here, that we do not believe in our motions that there was State preemption or Federal preemption. The Judge held that there was no Federal preemption also held contrary to the Plaintiffs assertions at the Right to Farm Act did not preclude the Ordinance also held that under the police powers, the County has the ability to regulate nuisances but then held that State preemption on agriculture laws invalidated the Ordinance.

Mr. Hooser: So at the end of the day is it safe to say that you believe or your firm believes that Ordinance No. 960 is an ordinance that is legal and potentially could be implemented?

Mr. Minkin: I believe that Ordinance No. 960, there are other legal issues that are there that we feel very strongly about in supporting and basically defending the Ordinance. At the end of the day we do not believe that the Ordinance is preempted by the current statutes on the books with the State of Hawai'i and the Court held otherwise. We believe very strongly that the Court got it wrong.

Mr. Hooser: Thank you very much. Thank you, Chair.

Chair Furfaro: Any other questions? Mr. Chock.

Mr. Chock: Thank you, Mr. Minkin, for being here as our Special Counsel. The communication talks about legal fees beyond the two hundred ten thousand dollars (\$210,000) previously authorized by the Council and so I wanted to be sure there was an understanding and if you could verify that.

Mr. Minkin: Basically what myself and my firm have agreed to is to continue representing the County in this matter whether it is dealing with other motions that get filed by the District Court such as an attorney fees, motion or an appeal, we will cap our fees at two hundred ten thousand dollars (\$210,000) which has already been authorized by this Council and amendments to the original contract and based upon ethical rulings, we are capping our potential exposure on cost at twelve thousand seven hundred and fifty dollars (\$12,750). That is for costs solely above and beyond the two hundred ten thousand dollars (\$210,000).

Mr. Chock: Thank you very much.

Mr. Minkin: With no additional charge to the County for fees related to either filing any motion or any appeal.

Mr. Chock: Thank you.

Chair Furfaro: Any further questions? If not, again, thank you very much on behalf of the County of Kaua'i for your offer to pursue all of these things related to this potential appeal. Thank you very much.

Mr. Minkin: Thank you.

There being no objections, the meeting was called back to order, and proceeded as follows:

Chair Furfaro: Any further discussion before I call for a vote?

Mr. Bynum: I appreciate Mr. Minkin and his appearances that the public could see in the last two (2) Council meetings because a lot of these issues are briefed and counter-briefed in thousands of pages of legal arguments. The context in the community is pretty intense but as the Judge points out in his ruling, his ruling does not diminish the health and safety concerns of the people of Hawai'i. Over the last week or two, I have been reading again the American Academy of Pediatrics released in early 2013 or late-2012 about pesticide exposure from the numbers of sources and its impact on children. One of the provisions that got struck

down in Ordinance No. 960 was a mechanism for our Pediatricians and OB/GYN (Obstetrics and Gynecology) to get specific information that they need for their clients. I would ask the community to look at that American Academy of Pediatrics bulletin again and contrast it with what the attempted actions are by the County of Kaua'i. I never accepted that this legal concern would be resolved at the first Court hearing. We agreed to extend the deadline of implementation to give the Courts time to do that and we know for certain that had every argument gone our way that the chemical companies would be appealing and the County would still be involved in defending at some level. I think it is an obvious choice to move forward especially and even without this largest...that is coming from the McCorriston firm who has worked for the County of Kaua'i on many matters over the years. This is an issue of Statewide and National importance but most importantly for us it is about the health and safety of our citizens. Nothing about this Court decision diminishes the legitimate concerns of our community and our responsibilities to respond to them. Thank you.

Chair Furfaro:

Anyone else wish to speak? JoAnn.

Ms. Yukimura: State preemption of Counties is a matter of State law so it really makes sense that the decision about what State law says is from the State Supreme Court. I do believe that the Federal Court era did not certifying the question to the State Court and that is why I believe that is worthy of an appeal.

Mr. Kagawa: To approve today's money is to approve supporting Mr. Minkin in going forward with the appeal process. Everybody knows in here and in the community that from the beginning or Bill No. 2491, I did not support the Bill because of the major legal questions. I said that in the first meeting. I went back to the minutes and before even hearing any attorneys speak or the County Attorney coming out with an opinion, I came out with my statement that I felt that the Bill had significant legal problems and I got the "boos" and the "oh, what are you doing." We had Earthjustice and other attorneys saying, "Do not worry, Mr. Kagawa, if they sue, they do not have a case. We will beat them in Court. We will donate our time and fees to the County which is unprecedented, but we will do that and this Bill will be solid and upheld." I did not buy that kind of advice. I prefer to get an objective attorney opinion to support what I had thought, that was real and thus far my hunches have been true. The Bill had been determined invalid by Judge Kurren and there is nothing that I have seen that will change my opinion of what will happen in the appeal process. Where I chose to put my effort was to improve the impact to the residents and I spent many meetings up in O'ahu and even disagreed and pounded the desk of the State Department of Agriculture when they told me that they got six (6) out of nine (9) positions that they have asked for added and none of those six (6) were going to come to Kaua'i. By fighting hard for the residents of Kaua'i saying that we are the island that approved this bill because they are frustrated with the State, we got that position added. I just got a call on September 4th at 8:18 in the morning from Thomas Matsuda who told me basically that because I have been putting in the effort and with the help of the Legislators, they added a new Inspector position to Kaua'i. That is where you are going to get immediate impacts. We are going to have...we are going to double our workload of the State Department of Agriculture Office from one (1) Inspector to two (2). That are real changes for the people of Kaua'i. Those of you who believe the State is hopeless, do not do anything...well, that is your opinion. I believe they have the expertise, the jurisdiction. That is where I put my effort and I do not see with an appeal process how the lives of the west-siders are going to improve with a delay of a year, two (2), or three (3) years of just delays of appeals. How is that going to help? It is going to help nothing. To me, if we really want to help via County ordinance, via County bill,

let us write a good bill that will hold up in Court that will take action quickly and not delay. Thank you.

Chair Furfaro:

Mr. Hooser.

Mr. Hooser: I want to thank Mr. Minkin and his law firm for their good work that they have done and their commitment to following this through. I think you heard what he said he believes that the bill will hold up and it is not preempted. I appreciate the work that Councilmember Kagawa has done at the State level pounding on doors and Chair, I appreciate the work that you have also done on that. I know you have written many letters and talked to many of our State Legislators and Directors as many of us on this panel have done the same. That effort is paying off and I think that is refreshing in small increments it is paying off. I have to say that the attention to this issue would not have happened without the action of the people on the westside who have been directly impacted with this. This discussion would have never been on the table without the people that are being directly impacted by the dust and pesticides coming to the County and their government asking for help and support. Bill No. 2491/Ordinance No. 960 was a direct response to that request to the community. The actions requesting help from our Legislators was additional response but it all came from that initial conversation that the community came to us obviously frustrated. They have been in the lawsuit with Pioneer for many years and gotten no relief, they came to us and asked us for relief, and we put together a bill designed to present some measure of relief within our constitutional framework and it was reviewed by many attorneys. It was supported and opposed by various attorneys. One thing that this recent decision has told us is that we do have the right to regulate agriculture. We do have the right to regulate nuisances. Nothing precludes us from doing that. If Councilmember Kagawa wants to write a good bill, I will welcome him to do so. I certainly plan on writing additional bills on this matter myself. We can write bills to regulate dust, agriculture, and other measures to further those protections. If Councilmember Kagawa wants to join me on that, I would be happy to partner with him to further regulate this industry and provide protections to the people on the westside who are being impacted directly by this. I welcome that participation from any Councilmember to do so. I think it is important that the effort we put into this, while disappointing in some respects having the Court ruled the way they did, it certainly not over. There have been many gains that we made as a community through this effort and I think it is important to acknowledge those. The modest efforts that the Department of Agriculture now stepping up, I think is a direct result of that. The so-called "voluntary program" was something that was not in place so at least we are getting some kind of disclosure even though that disclosure is selective and does not disclose all pesticides that are being used, only those pesticides the companies want us to know about. But it is better than we had before. If you drive around the community and look across the street across from Kukui Grove you will see hedges being put in and buffer zones being put in all as a result...none of this would have happened in my opinion, none of this was happening before the discussion in our community started in Bill No. 2491 began. As a result of those discussions, working with Councilmember Bynum, I discovered that three (3) of the companies had not paid the property taxes that were owed on the property due to the large part to the County's responsibility for not billing them for it. But there were three hundred forty-two thousand dollars (\$342,000) worth of property taxes that were due but not paid. That is something we would have not known without the due diligence in the work to develop Bill No. 2491. Once I discovered that amount I talked to the Tax Department and they sent these companies bills. It went back to 2006 and the total was three hundred forty-two thousand two hundred sixty-seven dollars (\$342,267) approximately of taxes that

were not paid. The County was able to recover to-date a hundred and ninety-nine thousand eight hundred and sixty-three dollars (\$199,863), almost two hundred thousand dollars (\$200,000). That is two hundred thousand dollars (\$200,000) that this County would not have gotten if not for the work of Bill No. 2491. I appreciate the Tax Office, I appreciate the companies paying that amount. I wished they would have paid the full three hundred and forty-two thousand dollars (\$342,000) but by law we are not entitled to go back to 2006 and collect those. Every year it is like an endowment. Every year we will get...I want to say fifty thousand dollars (\$50,000) going forward as a result of that effort. There are many things that have happened. We got additional legal clarity that we did not have before and it is not over. I certainly going to support this twelve thousand (\$12,000) some dollars. Why would we not support the offer, the very generous offer by this law firm – the twelve thousand seven hundred fifty dollars (\$12,750) to pursue appeal all the way to the Supreme Court if they took it? So how do we not accept an offer like that from a company who believes they can win and is offering us this generous offer and it will not preclude us from taking any other action? It will not preclude us from getting the State to push more, it will be preclude us from passing other laws to have other protections. I can find no good reason not to support this modest amount of money and encourage my colleagues to join in on the support.

Chair Furfaro:
spoken?

Any member want to speak that has not

Mr. Chock: I just want to take the opportunity to thank our Special Counsel, David Minkin, Mr. Andrade for continuing to be here and give us guidance and most of all for helping to guide the process as it continues. The legal process is on its way and you are allowing it to run its course and to answer all the questions that are necessary for us to gain clarity. I also want to acknowledge that taking that aside and for us not to lose focus on the core issue which is the fact that some people have complained and about the health and that we should also look for opportunities to come back to that need. I am hoping to see that the Administration along with our Council looks for opportunities to bring these parties together. The State now with its more of a definition of its role as well as the community, people who have said that they are being exposed and then the companies. I think this opportunity will allow us to keep the legal process in one (1) arena and still continue to look for the solutions we need because in the meantime after a year or two or however long this takes, the most important is the communities health. I have heard a lot of things in this process of the appeal. The likelihood of this being appealed from every party is pretty high. Whether or not we had an Ordinance, the likelihood is that anything will be challenged just because of the nature of this subject. Again, to keep sort of that jaded bigger picture out of our hands and keep really what is focused and needed for our community like Councilmember Kagawa had mentioned I think is where I would like to spend our energy. Thank you again for everything you are doing for us.

Ms. Yukimura: While Bill No. 2491 did trigger a very deep and unfortunate polarization, it did also raise a very important issue about our community's health. It is an issue that needed and needs to be addressed. I think even Councilmembers Rapozo and Kagawa who voted against the bill did not deny the problem but they said that...their thinking was that it needed to be addressed by the Department of Ag. I think the issue has been before us and all of us have been trying to see that it is addressed in a variety of ways. I have not been very verbal about what I have done *vis-à-vis* the Department of Agriculture but I did also go to Honolulu and meet with Mr. Matsuda and Councilmember Nakamura and I had a

conference call with the Department of Agriculture seeking their cooperation while we were working on Bill No. 2491 to actually agree to enforce whatever provisions of the bill would pass because they were the ones who have the established expertise. We did this in order to try to engage the Department of Agriculture to get involved in the issue and also to...in the hopes of making the bill more legally defensible by involving the Department of Agriculture which we thought could maybe preclude the preemption issue, but of course none of that happened at that time. I also want to recall as Councilmember Kagawa has recalled his earlier statements, I want to recall that I said several times that I had thought there was a sixty/forty (60/40) chance that we would be preempted but that I felt nobody could tell us all the arguments and testimony before us could really tell us what the law was except for the Court itself. I was actually applauded by my legal colleagues who gave a *carte blanche* approval to 2491 saying it was legally sound. I really felt that we needed to go to Court and we have gone to Court. The Court has given us a very interesting decision. I mean it is made clear that County regulation through a bill like 2491 or Ordinance No. 960 is not preempted by Federal law which is a really important decision however it did opine that or decide that our actions are preempted by State law however it was a Federal Court doing this. I think the proper action of a Federal Court should have been to certify it to State Court and that is the issue that will be appealed and so I think it is an appropriate thing to do at the cost that has been generously provided by the...a limitations on the cost that have been provided by our Special Counsel and I think it is also instructed that Councilmember Hooser has explained how the bill has led to some additional tax money being available. In the context of all of that I think that an appeal is appropriate.

Chair Furfaro:

Mr. Kagawa.

Mr. Kagawa: My name was mentioned. I just want to mention that we need to go back and remember what really happened when we finally approved Bill No. 2491. The Mayor sat here before us and told us, "Give me one month delay. Let me work with the State. Let me work with the various agencies. Let us get something that will work for the community." He asked for one money delay and we decided instead to take that sixty/forty (60/40) chance, not even give him a month. Let us take our chance on that forty percent (40%). I mean if it was your money, the taxpayers money, would you roll the dice on forty percent (40%)? Let us get real and remember what really happened. Let us not get caught up in the hype. Let us remember what happened. Let us remember what kind of message we send to the Department of Agriculture and then now to say that it is our work that led to the Department of Agriculture's cooperation? You do not work like that. You do not just pass a bill and say that they do not do their job and so we are going to pass this because they do not do their job. Now to sit here and say it is our work that led to the Department of Agriculture. You work by working together – sitting down at the table man-to-man saying, "our community is asking for a little more help with this dust and these problems out here." Mr. Matsuda, unbelievable the sincerity he shows, it does not show me to be a guy that does not care. Let me just say that that is not how we get results for our people. We do not just ignore what the facts are and just say things that make us feel good. Thank you.

Chair Furfaro:
speaking.

Right and this would be your second time

Mr. Hooser:
appreciate that.

Yes, we are entitled to speak twice. I

Chair Furfaro:

Yes and I am giving it to you.

Mr. Hooser: I do not think it serves us well to rehash a year's worth of work on Bill No. 2491 and Ordinance No. 960. At the same time I think it is important to recognize the history that each of us knows. I have been working on this issue for fifteen (15) years. I have been listening to the industry say, "next year." When the kids from Waimea Canyon School first got sick, I worked on this in the State Senate and they said, "no, no, no" and then finally they put in the so-called voluntary buffer zone over there. Waiting around for the State to do something for me personally after waiting fifteen (15) years is not something I wanted to do. I think the people of the Westside have been waiting for ten (10) years hoping for relief and so I think we fulfilled our responsibility as Council. We listened to the community, we took a long time during deliberation, and we had full community meetings. I think it is important to remember this is only about disclosure, buffer zones, and a study. That is all this is. We had a majority of the Pediatricians in our community say this is the right thing to do. We had the Hawai'i State Teachers Association say this is the right thing to do. We had the Hawai'i Nurses Association say this is the right thing to do. We had more people show up on this issue saying it is the right thing to do then we had on any issue ever. We took our responsibilities seriously. We did our deliberation, we passed the bill, and it became law. It was challenged in Court and now we are here appealing it. I want to thank our Attorney who believes that we can win this appeal and believes that we are not preempted and is putting their money where their mouth is and only charging us twelve thousand seven hundred and fifty dollars (\$12,750) more than we have already appropriated to defend it all the way to the United States Supreme Court if it takes it. Why would we not want to support that offer is beyond me. Thank you.

Chair Furfaro: Okay. I would like to first of all say to everyone here as we move forward on this appeal that I want us to all value each Councilmembers' opinion and actions. This is what living Kaua'i is all about. This is about being good stewards as well. Some of us may disagree on the approach but the reality is we are a land of laws and this is what has come to us. I think the introduction of the bill itself really increased the attention that was needed to manage and be a good steward of our land. Ordinance No. 960 has done that across the islands and the State. People came to make their queries their way. Mr. Rapozo and Mr. Kagawa made several visits to the State and pleading our case. I think JoAnn said it from the very beginning she thought there was a very good possibility sixty/forty (60/40) that we would be preempted but the main thing I want to understand here is we are getting clarity about the various political subdivisions and their *kuleana*. What are they responsible for? That is the bottom line here. The ruling bothered some because of the impact on agriculture and so forth, we also have to make sure that the ruling has really other implications about our authority as a political subdivision. This is extremely important. The County's authority, the State's authority and the Federal government's authority. To do that and get the clarity we are going through this appeal. There are other Intervenor and they will pursue other possibilities. There is a public trust document that we know that puts burdens on all political subdivisions. These things are coming out in open discussion now – extremely important for us to understand being good stewards of our land. The State has been very clear with the Judges interpretation that they occupy the field that deals with the application and management of Agriculture lands. We will query always our responsibility to be able to handle public safety, public interest for really the right reasons. We do reserve the right to do studies and the documentation on getting information that can be provided to others so that we can constantly make improvements. That is what this is about for me and it is also not the easiest job to

facilitate leadership from this end of the table. I have asked all of my colleagues at the table about mutual respect as we go through this process. I ask the community, you know, let us make sure we build our island on a foundation of *aloha* and mutual respect. Remember we are truly doing this for the right reasons to get clarity. To really have clarity in our community on what responsibilities we have and working with corporations that are in our community. There is a lot to be thankful for with the law firm that is doing this for a very fixed amount and we certainly appreciate that and it is done in the spirit of doing the right thing for the right reason and getting clarity. I work with a very fine group of people here and everybody does have Kaua'i's best interest at heart even though they may not seem that way to you sometimes. At the end of the day we all want to be very good stewards of Kaua'i. On that note, please call for the vote.

The motion to approve C 2014-248 was then put, and carried by the following vote:

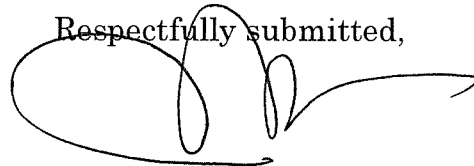
FOR APPROVAL:	Bynum, Chock, Hooser, Yukimura	
	Furfaro	TOTAL - 5,
AGAINST APPROVAL:	Kagawa	TOTAL - 1,
EXCUSED & NOT VOTING:	Rapozo	TOTAL - 1,
RECUSED & NOT VOTING:	None	TOTAL - 0.

ADJOURNMENT.

Mr. Chock moved to adjourn the Special Council Meeting of September 17, 2014, seconded by Mr. Kagawa, and carried by a 6:0:1 (*Mr. Rapozo was excused*).

There being no further business, the Special Council Meeting adjourned at 11:12 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
Deputy County Clerk

:dmc